



RIGHTS STUFF

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New State Law Affects Non-Violent Offenders

In the 2011 session, the Indiana State Legislature changed state law so that people who have been convicted of non-violent offenses may now be able to have their criminal records sealed.

Eight years after a person completes his sentence for covered offenses, he may now file a petition with the court where he was convicted, asking the court to seal his criminal records. If the court grants the petition, the offender would not be required to disclose his conviction on employment applications or any other documents outside the criminal justice system. He will be able to legally say on employment applications that he has not been

convicted or arrested for a crime.

People often call the BHRC and say that they are unable to find employment because of their criminal history. Often the conviction occurred years if not decades ago, and the callers tell us they have stayed out of trouble since then. Before, their criminal record could follow them for life. This new law will help remove a large barrier in finding employment.

For more information on filing a petition, consult a private attorney.

DOJ Announces Settlement

In June of 2011, the United States Justice Department announced that it had entered into a comprehensive agreement with the State of Delaware that will transform Delaware's mental health system and resolve alleged violations of the Americans with Disabilities Act.

According to the department's press release, it began investigating Delaware's state hospital in 2008. In 2010, it modified the scope of its investigation to focus on alleged violations of the ADA throughout the state's mental health system. Delaware worked cooperatively with the DOJ to negotiate an

agreement.

Under the terms of the agreement, Delaware will expand its community mental health system so that it can serve people with severe and persistent mental illness in the most integrated settings appropriate to their needs. Over the next five years, the state will prevent unnecessary hospitalization by expanding and deepening its crisis services, including a hotline, crisis walk-in centers, mobile crisis teams, crisis apartments, and short-term crisis stabilization programs. Delaware also will provide assertive community treatment

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Council for Community Accessibility Seeks Nominations for Annual Awards

The City of Bloomington Council for Community Access (CCA) invites you to submit nominations for the CCA's Annual Awards Ceremony. The CCA will honor individuals, businesses, and organizations for going above and beyond the call of duty on behalf of people with disabilities. The Council is seeking nominations in the following categories:

- Kristen Willison Volunteer Service Award
- Business Service Award
- Professional and Community Service Award
- Housing Service Award
- Self Advocacy Award
- Mayor's Award

For more information, contact
Craig Brenner at 349-3471 or
e-mail brennerc@bloomington.in.gov.

If you know an individual, business, or organization worthy of recognition, please complete a nomination form!

Hotdogs and Unemployment Benefits

Nolan Koewler worked for Dillards, Inc. On July 4, 2010, Dillards had a cookout for employees. The company fed its employees hamburgers and hot dogs. After the cookout, the dock manager, Mike Marz, wanted to save the leftovers for Labor Day. He told the employees to put the leftovers in the freezer. He believed that Koewler heard his instructions.

The next day, Koewler took two leftover hot dogs from the refrigerator and ate them. Apparently, the instructions were not clear, because the food was in the refrigerator, not the freezer. Six employees had access to the refrigerator.

According to a recent court decision, "Marx reviewed a surveillance video and reported to the store manager that Koewler was a suspected hotdog thief." A meeting followed at which Koewler admitted having removed the hotdogs from the refrigerator and consuming them. Dillards summoned a police officer and told Koewler he had a choice: sign a statement that he stole two leftover hotdogs from the 4th of July celebration for employees or spend the night in jail. Koewler signed the statement and was fired.

Koewler filed for unemployment benefits. Workforce Development

found that he had not been fired for just cause and thus was entitled to unemployment benefits. Dillards appealed to the review board, which found that he had been fired for just cause. Koewler then appealed to the courts, and won.

At the court hearing, Dillards was unable to place a value on the stolen hotdogs. The Court said, "We assume that two hotdogs in said storage lacked great market value and that the intrinsic value to Dillards was diminishing as the safe consumption date approached."

The Court said that there was not evidence to show that Koewler knew that Marz intended to save the hotdogs for Labor Day. The Court said "the record reveals that employees had been offered hamburgers and hotdogs for consumption; it does not reveal that the rescission of this offer of celebratory food was in fact communicated to Koewler." Since there was no evidence that Koewler knew these hot dogs were off limits, there was no evidence that he had stolen them. Theft requires a "knowing or intentional exertion of unauthorized control." And if he did not commit a theft, then his termination was not for "just cause."

DOJ Settlement (cont. from page 1)

teams, intensive case management and targeted case management to people living in the community who need support to remain stable. The state also will offer scattered-site support housing to everyone in the agreement's target population who needs that type of housing support. Finally, the state will offer support services for daily life, including supported employment, rehabilitation services, and peer and family supports.

To learn more about what the Department of Justice does, visit www.justice.gov/crr.

Thus, he was entitled to unemployment benefits.

The case is *Koewler v. Review Board of the Indiana Department of Workforce Development*, 2011 WL 2650682 (Ind. App. 2011).



Man Prevails in Summary Judgment Motion

Brian Seim began working for Three Eagles, a company that operates seven radio stations in the Fort Dodge, Iowa area, in November 2008. He started out as a morning radio show host, arriving at work at 5 a.m. and being on air from 6 to 10 a.m.

Seim has Grave's disease, which is an autoimmune disorder. He said his condition had been treated with radiation therapy in the past and this destroyed his thyroid gland. Now, he has to take medication to provide the hormones that his thyroid gland once produced. His condition causes his vision to deteriorate, weight fluctuation, insomnia, narcolepsy, anxiety, swelling, skin lesions of the lower extremities and difficulty standing for long periods of time.

Seim said that he told management that he had a blood disease that would require him to take time off occasionally. He said shortly after he began working for Three Eagles, he began experiencing problems with his medication. They made him drowsy and confused, and caused him to slur his speech; not a great attribute for a radio show host. He said these side effects wore off by mid-day, so he asked to be transferred to an afternoon show. At least for a while, the station denied this request.

He said that on-air hosts typically stood during their shows, but his condition makes standing for any length of time painful. He asked for a chair. The station denied this request as well, but another employee brought a chair from his home.

Seim also said that his supervisor, Miles Riker, perceived him to be gay and harassed him on this basis. Seim said that at least three times, Riker asked if he was gay. Riker asked Seim if his blood disease was AIDS. When people were talking about a new women's restroom in one of the radio stations, Riker said that Seim should be asked to check it out. When Seim asked Riker if he could interview the first gay couple to be civilly united in Iowa, Riker said "I knew you were going to ask me that" and said the story was "perverted." Someone painted anti-gay graffiti on Seim's car when it was parked in a Three Eagles parking lot, but Riker refused to investigate the vandalism. Once, Riker pinched Seim's breast and told him that he would make some man happy one day. The day Seim was terminated, Riker said he knew Seim was a "pansy" the day he first saw him.

Seim said he repeatedly complained to his superiors that he was being discriminated against on the basis of his disability and/or his perceived sexual orientation, but nothing was done. He lost his job in May of 2009. He filed a lawsuit alleging discrimination on the basis of disability and/or sexual orientation. Three Eagles filed a motion for summary judgment, meaning they believed there was no genuine dispute as to any material fact and that they were entitled to win as a matter of law. They lost their motion. The Court said that based on the pleadings, there were genuine issues of material fact as to whether the station knew Seim had a disability, whether it failed to reasonably accommodate his disability and whether it had engaged

in the required interactive process as far as his requested accommodations.

The Court also said that there was sufficient evidence to believe that Seim had been the victim of same-sex sex discrimination, meaning a man discriminating against another man. The comments and actions Seim attributed to Riker "were not 'stray remarks' in the workplace, statements by non-decision makers, or statements by decision makers unrelated to the decisional process itself. Riker was Seim's direct supervisor and the most senior employee at the radio station where Seim worked." Riker was not the only one who apparently decided to terminate Seim, but the other decision makers were clearly influenced by him, according to the Court.

Three Eagles said that it had a legitimate, nondiscriminatory reason to terminate Seim: he was acting "erratically and inappropriately, and thus was unfit to take the airwaves." But Seim had evidence that he had a history of good work performance and that Three Eagles had praised him for his "outstanding performance." This was an issue for the jury to resolve, and so they rejected Three Eagles' motion for summary judgment, allowing the case to move forward.

The case is *Seim v. Three Eagles Communications, Inc.*, 2011 WL 2149061 (N.D. Iowa 2011).



Recent ADA Settlements

The US Department of Justice recently released a summary of ADA-related settlements from the second half of 2008. A few examples:

- An individual with a mobility disability said that a Texas rodeo charged higher fees for accessible parking spaces than for other spaces in the same lot. The rodeo changed its policy and now charges the same fee for accessible and regular parking.
- An individual who is deaf said that employees at a Virginia takeout restaurant refused to take her telephone order made through the telecommunications relay system. The restaurant now accepts all relay calls and has trained its staff on how to accept such calls. The restaurant also paid the complainant \$500.
- An individual with a mobility impairment said that a Florida gas station did not have accessible gas pumps and did not provide assistance to customers with mobility disabilities who were unable to refuel their vehicles. The station has agreed to maintain call buttons on its gas pumps in working condition, to train staff to respond promptly to people requesting assistance in fueling their vehicles, and to provide signs and visual alarms for restrooms.
- An individual who is deaf alleged that the office of Maryland psychiatrist failed to provide a sign language interpreter for a scheduled appointment. The doctor's office agreed to adopt a policy of providing qualified sign language interpreters and other auxiliary aids and services, train office staff, and post signs informing its patients of the policy. The office also paid the complainant \$1,500.
- An individual who is blind alleged that a national car rental chain outlet in Virginia refused to rent him a car in his own name because he was using a surrogate driver. The company amended its policy to allow individuals with disabilities to rent cars using surrogate drivers, notified all of its rental outlets of the new policy, updated its computer software to be sure that correct information is obtained during the registration process from both customers with disabilities and their surrogate drivers, and revised its web page to reflect those changes. The company also paid the complainant \$5,000.

News from the EEOC

The U.S. Equal Opportunities Commission recently announced developments in two cases:

- Wal-Mart has agreed to pay \$440,000 to settle a lawsuit alleging harassment against Latino employees. The EEOC said that at least nine employees of Mexican descent at Sam's Club in Fresno, along with an employee who was married to a Mexican, endured ethnic slurs and derogatory remarks by a fellow co-worker who herself is Mexican-American. The ten employees were subjected to near-daily insults about Mexicans, including being called "(expletive deleted) wetbacks" and being told that Mexicans were good only for cleaning her home. She even threatened to report three of the victims to immigration authorities despite their legal status. According to the EEOC, the victims complained about the hostile work environment to their management beginning in April 2006. After they complained, the harassment only intensified and the offender began intimidating employees as well. Another offender began deriding one of the victims for her limited English. The victims filed a complaint with the EEOC in October 2006, and in December, Sam's Club fired the harasser. Under the terms of the lawsuit, Wal-Mart will not only pay \$440,00, but it will also provide training on harassment, set up a record-keeping procedure for complaints, report to the EEOC about any complaints and provide neutral references for victims.
- The EEOC is suing McDonald's in Reesburg, Wisconsin. According to the lawsuit, female employees at the restaurant were subjected to sexual comments, sexual propositions, or physical touching by co-workers. Some of the women were fired in retaliation for complaining about harassment. The EEOC said that McDonald's simply ignored the complaints. One woman found the harassment so intolerable that she quit. Several of the victims were in high school.